

TAB B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CYCLE-CRAFT CO., INC. d/b/a
BOSTON HARLEY-DAVIDSON/BUELL,

Plaintiff,

vs.

Civil Action
No. 04 11402

HARLEY-DAVIDSON MOTOR COMPANY,
INC., and BUELL DISTRIBUTION
COMPANY, LLC,

Defendants.

300 SE 2nd Street
Fort Lauderdale, Florida
February 2, 2005
1:00 p.m.

THE VIDEOTAPED DEPOSITION OF

DEBRA LUNSFORD

Taken on Behalf of the Defendants
Pursuant to Notice of Taking Deposition
Commencing at 1:12 p.m.

COPY

13:47:53 1 Q. All right. After you had the conversation
2 with Gus and Slim, you said you intervened. What
3 happened?

13:48:06 4 A. I don't know if Ron called me or I called
5 him, okay, but there was a -- on his cell phone.
6 And, you know, we told him that that was fine, we
7 wouldn't do the deal, and --

13:48:22 8 Q. Well, why wouldn't you do the deal; did
9 you say why?

13:48:25 10 A. Because I wasn't going to get 19 different
11 cashier's checks and 19 individual names. You know,
12 I just -- I thought it was ridiculous. And he just
13 insisted that's the only way he could do it, so ...

13:48:39 14 Q. Did he say why it's the only way I can do
15 it?

13:48:42 16 A. Absolutely. Just --

13:48:43 17 Q. What did he say; what did he tell you?

13:48:44 18 A. Because he had to have it in the
19 individual names because it had to --
20 dealer-to-dealer could not sell dealer-to-dealer.
21 Okay. They had to have 19 individual names like as
22 a retail deal so it would show as a retail deal, and
23 they had to, like, register their warranty or
24 something like that --

13:49:04 25 Q. Did he tell you --

13:49:04 1

A. -- so you could get the allocation.

13:49:07 2

Q. All right. And did he tell you why it
needed to show as a retail sale instead of a
dealer-to-dealer sale?

13:49:13 5

A. Because --

13:49:14 6

MR. REHNQUIST: Object to the --

13:49:14 7

A. -- of the allocation.

13:49:15 8

MR. REHNQUIST: Whoa, whoa. Object to the
form.

13:49:17 10

Go ahead.

13:49:18 11

THE WITNESS: I'm sorry.

13:49:18 12

BY MR. BERKOWITZ

13:49:18 13

Q. Was it because of the allocation?

13:49:20 14

A. Yes, sir.

13:49:28 15

Q. How did you leave it at the end of that
conversation?

13:49:31 17

A. That was the way I left it.

13:49:33 18

Q. That you weren't going to do it?

13:49:34 19

A. Uh-huh.

13:49:35 20

MR. CONTINI: You have to say yes.

13:49:36 21

BY MR. BERKOWITZ

13:49:36 22

Q. You have to answer verbally.

13:49:38 23

A. Yes. I'm sorry.

13:49:39 24

Q. All right. Tell us what happened next.

13:49:45 25

A. Somehow, some way, they -- Gus and Slim

1 saved it and they said the deal was on again.

13:50:00 2 Q. Okay. Do you remember anything more
3 specifically about what they told you?

13:50:03 4 A. No.

13:50:03 5 Q. Did you get in -- did you get involved
6 again at some point?

13:50:08 7 A. Yeah, when the -- when the paperwork came
8 and the titling part.

13:50:20 9 Q. From your conversation with Mr. Buchbaum,
10 did you have an understanding as to whether he
11 wanted you to simply plug in names as fictitious
12 buyers for the 19 motorcycles?

13:50:38 13 MR. REHNQUIST: Object to the form.

13:50:38 14 A. Right. He told us to use family, friends,
15 whatever. It didn't matter. Just -- you know, they
16 just needed 19 names.

13:50:45 17 BY MR. BERKOWITZ

13:50:46 18 Q. Did -- in your conversation with
19 Mr. Buchbaum, did you have -- did you mention at all
20 the fact that the motorcycles were going to go to
21 another dealer?

13:50:57 22 A. Yeah. I told him that we had a deposit
23 from another dealer. He knew they were being
24 wholesaled. That was the whole point of the whole
25 deal.

14:02:04 1

Q. And to your knowledge did any of those people provide any funds for the purchase of any of these motorcycles to DCI?

14:02:13 4

A. Yes.

14:02:14 5

Q. Yes, they did?

14:02:15 6

A. No, I'm sorry. Say that again.

14:02:17 7

Q. Did any of the 19 people that are identified as these fictitious customers, did they provide any money to DCI for any of these bikes?

14:02:30 10

A. No, they did not. This was all DC International's money.

14:02:36 12

Q. Okay. And this was -- these funds were coming out of DC International's bank account at Northern Trust Bank of Florida, is that correct?

14:02:44 15

A. That's correct.

14:02:45 16

MR. REHNQUIST: Objection. Leading.

14:03:00 17

(Conferring with counsel.)

14:03:05 18

MR. CONTINI: I apologize, gentlemen, for the interruptions on my behalf before.

14:03:11 20

BY MR. BERKOWITZ

14:03:12 21

Q. The -- the date of the checks, of all of the checks, is July 28, 2003; do you see that?

14:03:20 23

A. Yes.

14:03:24 24

Q. That's on Exhibit 4, correct?

14:03:26 25

A. Yes.

14:57:39 1 MR. CONTINI: Yeah.

14:57:39 2 BY MR. BERKOWITZ

14:57:40 3 Q. Okay. Directing your attention to Page 46
4 and the sentence that begins "The records," "The
5 records reflect that DC Imports applied for" -- and
6 then we're missing a word -- "in the name of 19
7 individuals who are friends or family of Mrs. Cooke
8 to make the purchases look like individual retail"
9 and then we have SA, but not the rest of the word.
10 "This was done to circumvent Harley-Davidson policy
11 prohibiting dealer to dealer sales." Do you see
12 that?

14:58:15 13 A. Yes.

14:58:15 14 Q. Okay. And is it true that what you've
15 testified to in connection with these 19 motorcycles
16 that were purchased by DCI, that the identification
17 of 19 individuals as fictitious purchasers was, in
18 fact, done to circumvent the Harley-Davidson policy
19 prohibiting dealer-to-dealer sales?

14:58:38 20 MR. REHNQUIST: Objection.

14:58:39 21 A. Absolutely.

14:58:39 22 BY MR. BERKOWITZ

14:58:40 23 Q. All right. And whose idea was that?

14:58:43 24 A. Ron Buchbaum of Boston Harley-Davidson.

14:58:47 25 Q. And is that something that you told the

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Q. All right. I'd like to direct your attention to the second page of this declaration and specifically, Paragraph 6. I'm going to ask you to read that silently to yourself, please.

Just let me know when you've finished it.

A. Okay.

Q. All right. Directing your attention to the second sentence of this paragraph, it reads, "In point of fact, according to the criteria set out in the Harley-Davidson nonretail sales policy by which I and my staff evaluate each and every motorcycle purchase, each of these motorcycles was purchased by an individual." Do you see that sentence?

A. Yes, I do.

Q. And is it true that each of these motorcycles was purchased by an individual?

A. No.

Q. Were the motorcycles purchased by DCI?

A. Yes, they were.

Q. And was Boston Harley-Davidson aware of that?

A. Yes, they were.

MR. REHNQUIST: Objection.

BY MR. BERKOWITZ

Q. The next sentence states, "Each individual

1 purchaser took title to his or her motorcycle in his
2 or her own name, as reflected on the certificates of
3 origin in each deal jacket." Do you see that
4 sentence?

15:47:58 5 A. Yes, I do.

15:47:59 6 Q. Is that sentence true?

15:48:00 7 A. No.

15:48:00 8 Q. In fact, DCI purchased all of the 19
9 motorcycles, is that correct?

15:48:04 10 A. Yes, we did.

15:48:06 11 MR. REHNQUIST: Objection.

15:48:06 12 BY MR. BERKOWITZ

15:48:06 13 Q. And Boston Harley-Davidson was aware of
14 that, is that correct?

15:48:10 15 MR. REHNQUIST: Objection, leading.

15:48:11 16 A. Boston Harley-Davidson instructed us to do
17 it that way.

15:48:14 18 BY MR. BERKOWITZ

15:48:19 19 Q. The last sentence of Paragraph 6 states,
20 quote, on paper and as far as anyone at Cycle-Craft
21 knew or could have known, these were sales to
22 individual purchasers in compliance with all
23 Harley-Davidson policies, end quote. Do you see
24 that statement?

15:48:34 25 A. Yes, I do.

1 them up.

17:54:00 2 Q. Did she tell you anything else about her
3 dealings with Northern Bank & Trust?

17:54:03 4 A. No.

17:54:07 5 Q. Is there anything else that you wish to --
6 to clarify in any of your answers that you've given
7 today?

17:54:14 8 A. Not that I can think of.

17:54:17 9 MR. REHNQUIST: Okay. I am through with
10 my questioning for present and I thank you for
11 your cooperation and apologize for bringing up
12 sometimes unpleasant things.

17:54:25 13 A. Thank you.

17:54:26 14 MR. BERKOWITZ: All right. I just have a
15 few follow-up questions on your conversations
16 with Mr. Buchbaum.

17:54:30 17 REDIRECT EXAMINATION

17:54:32 18 BY MR. BERKOWITZ

17:54:32 19 Q. In your testimony in response to
20 Mr. Rehnquist's questions, you indicated that
21 Mr. Buchbaum insisted that the deal be done with 19
22 individuals, as opposed to a single transaction, is
23 that correct?

17:54:44 24 A. That is correct.

17:54:44 25 Q. All right. And did you discuss with

1 Mr. Buchbaum that you didn't have 19 customers
2 standing by, ready to buy these units?

17:54:55 3 MR. REHNQUIST: Objection, leading.

17:54:56 4 A. No. I mean, it was known that it was --
5 the 19 bikes were going to us.

17:55:01 6 BY MR. BERKOWITZ

17:55:02 7 Q. And did he make any suggestion as to how
8 you should do the paperwork in order to make it
9 appear to be 19 retail sales or 19 sales to end
10 users?

17:55:12 11 A. That they needed 19 different driver's
12 license of family and friends, that it could be
13 family and friends or just whoever.

17:55:18 14 Q. So was it Mr. Buchbaum who suggested to
15 you to contact family and friends to do the
16 paperwork on these transactions?

17:55:25 17 A. Just that he needed 19 different, you
18 know, driver's license to do it.

17:55:30 19 Q. All right. And was he the one who
20 suggested that you could contact family and friends
21 to --

17:55:34 22 A. Yes.

17:55:34 23 Q. -- get those 19 --

17:55:37 24 A. Yes.

17:55:37 25 Q. -- driver's licenses?

17:55:38 1

A. Yes.

17:55:39 2

MR. BERKOWITZ: All right. I don't have anything further. Thank you very much.

17:55:43 4

MR. STRACHER: Anything further?

17:55:44 5

MR. REHNQUIST: No.

17:55:44 6

MR. STRACHER: Okay. Great.

17:55:44 7

THE VIDEOGRAPHER: We're going off the record. It's 5:55.

17:55:46 9

(Thereupon, the following proceedings were held off the video record:)

17:55:48 11

THE COURT REPORTER: Read or waive?

17:55:49 12

MR. STRACHER: We will read.

17:55:52 13

(Thereupon, the taking of the deposition was concluded at 5:55 o'clock p.m.)

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